IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 805 OF 2004

IN

TESTAMENTARY PETITION NO. 848 OF 2001

IN

TESTAMENTARY SUIT NO. 44 OF 2002

Ramesh N. Siddhanti .....Plffs.
vs.
Smt. Praha Kabbur and ors. .....Defnds.
AND
Vinayak N. Siddhanti and ors. .....Respds.

V.A. Thorat with K.D. Shah for Resp no.2 in N/M. 2157 of 2002 to show cause and for support in N/M No. 805 of 2004.

V.R. Dhondi/b. M.G. Gawde for resp no.3.

D.D Madon with B.B. saraf and S. Purohit i/b. Y.N. Adiya for defendants to show cause in NM/ 2157 of 2002 and 805 of 2004.

R. Tayde for respondent no.1.

CORAM: S.U. KAMDAR, J.

DATE : 11TH AUGUST, 2005.

P.C. :

1. By the present motion the second

respondent is seeking a permission to sell the the two flats being flat no.91 and 92 together with two open car parking spaces from and out of the allocable saleable areas of respondent no.3. It is the case of the Respondent no.2 that these flats are sold to him by respondent no.3. He has further contended that the said flat should be permitted to be sold at the price of Rs.93,53,380/- and out of the said amount a sum of Rs.90 lacs is paid by him as security deposit to the respondent no.3. The only basis on which the present application is made is the order passed on earlier occasion dated 23.10.2002 in Notice of Motion No. 2157 of 2002.

2. From the order dated 23.10.2002 it seems that the order is passed by almost consent of the parties as in para-1 and 2 it has been recorded that the negotiations are at the advanced stage but has been not completed. However relying upon the aforesaid order in which the respondent no.2 is permitted to carry out the development of the property and allowed to sell

60% constructed area. The present application is made with a view to sell even the balance constructed area of part of 40%.

3. In my opinion no such relief can be granted in a testamentary jurisdiction. The testamentary jurisdiction is a limited jurisdiction which does not determine any dispute or any rights inrespect of the properties or a title or distribution of the amount of sale proceeds or considerations inrespect of the immovable properties. Motion dismissed accordingly. No order as to costs.

sd/-

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